

REMARKS

Status of the Claims

Claims 23-40 are pending in the application.

Claims 23-40 stand rejected.

The Rejection Under 35 U.S.C. 102(e).

The Examiner has maintained the rejection of claims 23-40 under 35 U.S.C. 102(e) as being anticipated by Tanaka et al. USP 5,709,895, (cols. 3-7) The Examiner holds:

Although isomalt alone is not disclosed by Tanaka et al., as applicant contends, applicant's product is not limited to the treatment of isomalt alone nor is applicant's process limited to the treatment of isomalt alone. Thus, the combination of isomalt and modified starch, as disclosed by Tanaka et al., is not precluded by applicant's claims. In fact, applicant admits (page 3 of remarks) that optional ingredients may be used in conjunction with applicant's isomalt. The intended use of applicant's isomalt, i.e., to provide crunch to chewing gum, is entitled to no patentable weight in applicant's product or process of preparing claims.

Reconsideration and withdrawal is respectfully requested for the reasons as follow.

Applicants' claimed invention, as amended herein, is to a process for the preparation of a crunch providing additive which consists essentially of isomalt (claims 32-40) and to the crunch providing additive per se as prepared by that process, i.e., product-by-process claims (claims 23-31). Applicants' claims, as amended herein, exclude any other elements which would be of any essential significance to the claimed crunch providing property. Applicants' claimed isomalt product may contain optional ingredients such as flavoring agents, coloring agents, and most minor quantities of other polyols, but these materials are incidental to the claimed invention and not essential to the claimed crunch providing property.

Applicants respectfully submit that the amended language precludes the combination of isomalt and modified starch as disclosed by Tanaka et al. As the Examiner notes, the Tanaka et al. encapsulating matrix is composed of both a hydrogenated saccharide and a modified starch both of which Tanaka et al. require to be present in a weight ratio ranging from 15:85 to 85:15 on a solid basis. There is no teaching in Tanaka et al. of a product or process absent this combination. Tanaka et al. therefore do not expressly disclose nor inherently teach applicants' claimed invention as amended herein.

In view of the above applicants respectfully submit that the rejection of claims 23-40 under 35U.S.C. 102(e) should be withdrawn.

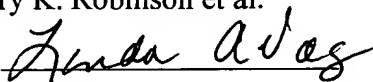
Conclusion

In view of the above applicants believe this application is in condition for allowance. Favorable action is solicited. If any questions remain, the resolution of which would be advanced by conference (telephonic or personal) with applicants' agent, the Examiner is invited to contact said agent at the telephone or the fax number noted below.

Respectfully submitted,

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